
Environmental Review

9.1

Overview

This chapter outlines for the Lender and HUD staff the policies and procedures that the HUD staff must follow to meet environmental responsibilities. For new construction and substantial rehabilitation, requiring pre-application review, HUD will not issue a letter of invitation to the Lender to submit an application for a Firm Commitment if there are unresolved environmental issues with the Phase I Environmental Site Assessment (ESA) or with other significant environmental issues, such as the location of the project in a floodplain. The pre-application process should identify any unresolved environmental issues, and HUD and the Lender should reach agreement at the pre-application stage regarding the measures to be taken to resolve the issues. The invitation letter should memorialize the agreement.

A. Legal Authorities, Handbooks, and Forms

1. All Federal agencies are required to comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) (NEPA), and the implementing procedures issued by the Council on Environmental Quality at 40 CFR Parts 1500-1508. HUD regulations implementing NEPA are contained in 24 CFR, Part 50, "Protection and Enhancement of Environmental Quality." Related Federal laws and authorities are listed in 24 CFR 50.4. HUD may not delegate its environmental responsibilities to others; it is required to prepare the environmental assessment and make the appropriate environmental finding. (See 24 CFR 50.11.)
2. HUD has issued two handbooks covering environmental issues: Handbook 1390.2 "Environmental Assessment Guide for Housing Projects" and Handbook 1390.4 "Guide to HUD Environmental Criteria and Standards contained in 24 CFR 51." Informal guidebooks issued by HUD on environmental issues are cited in this chapter. In addition, HUD offices may make the Guide, "Choosing an Environmentally Safe Site," which is used in the Section 202 and 811 programs, available to all projects.
3. HUD has established an environmental form, HUD-4128, that documents compliance with NEPA, and other environmental Federal laws, authorities, Executive Orders, and HUD standards. HUD-4128, "Environmental Assessment and Compliance Finding for Related Laws" is in the Forms Appendix. The Forms Appendix also contains the Sample Field Notes Checklist which the HUD staff will use to provide information supporting the conclusions listed on Form HUD-4128. Existing apartment and healthcare projects to be refinanced under Sections 223(f) or 232/223(f) do not require an environmental assessment under the National Environmental Policy Act except in extraordinary circumstances (see exclusion in 24 CFR 50.20(a)(5)), but do need to comply with Part A requirements of Form HUD-4128. Rehabilitation projects that meet the condition of 24

CFR 50.20(a)(2) also do not require an environmental assessment under NEPA except in extraordinary circumstances.

4. This chapter is not a substitute for requirements in the laws, regulations, and Executive Orders regarding environmental analysis.

B. Summary of Lender Responsibility

1. All projects (new construction, substantial rehabilitation, refinancing or purchase) submitted under MAP require a Phase I Environmental Site Assessment (ESA), in conformance with the American Society of Testing Materials (ASTM) Standards E1527-97 as amended. This shall be prepared by a qualified environmental professional. If the Phase I ESA is inconclusive, a Phase II ESA will be required. Phase I ESA and Phase II, if necessary, shall be submitted at the pre-application review for Sections 221(d), 220, and 232, and at the application for a Firm Commitment for mortgage insurance under Section 223(f) and for Section 232/223(f).
2. The Lender should also provide an environmental report to the HUD staff which will identify any environmental issues to be resolved, and will help the staff prepare HUD Form 4128, "Environmental Assessment and Compliance Findings for Related Laws". HUD Form 4128 and the Sample Field Notes Checklist that the HUD staff will use are included in this MAP Guide in the Forms Appendix. The Lender should follow the sample Field Notes checklist as a guide concerning information required. The Lender does not fill out HUD Form-4128.

C. Summary of HUD Staff Responsibility

1. HUD, not the Lender, is responsible for making an environmental assessment on Form HUD-4128 (See 24 CFR 50.32) and determining that there are no environmental factors that are prohibited by law, Executive Order, or regulation, or which would endanger health or safety, or would put FHA mortgage insurance or the U.S. Government at financial risk or liability. Environmental assessments for projects with more than 200 apartment units or 200 beds shall be sent for review and comment to the Field Environmental Clearance Officer or, in the absence of such an officer, by the Program Environmental Clearance Officer in Headquarters. (24 CFR 50.32). The Hub Director, or designee, who issues the commitment is responsible for signing HUD Form 4128.
2. HUD-4128 has four principal parts:
 - a. Lines 1-10: Basic project identification
 - b. Lines 11-14: Findings and approvals
 - (1) Line 11: NEPA finding and approval conditions
 - (2) Line 12: Preparers signature
 - (3) Line 13: Environmental Clearance Officer (24 CFR 50.32)
 - (4) Line 14—GYD approving official (24 CFR 50.11)

- c. Lines 16-20: Part A (24 CFR 50.4, Laws and Authorities)
 - d. Lines 25-33: Part B (Environmental/Program Features)
3. At the pre-application stage, HUD staff must review the Phase I ESA submitted by the Lender and must make a site visit. The site visit will help validate part of the information provided on the Phase I ESA and it also should be useful for evaluating other environmental factors. The site visit is customarily made by a HUD appraiser and/or environmental specialist.
 4. HUD staff will use information provided by the Lender along with the data obtained during the site visit, to prepare the Sample Field Notes Checklist which is the basis for completing HUD Form 4128. As noted, this checklist is in the Forms Appendix.
 5. In most cases, HUD Form 4128 will not be completed until after submission of the application for the Firm Commitment. If this is the case, close coordination between the Lender and the field office should make the production of this document a practical formality, with all issues resolved and agreed upon in advance. Environmental conditions which must be addressed prior to submission of a Firm Commitment application will be discussed in the letter of invitation for Sections 221(d), 220, and 232. Any requirements which affect project design will be fully detailed. The Lender must assure that any requirements affecting project design are conveyed to the design architect for incorporation into the contract drawings and specifications.

D. State and Local Laws

In cases where state or local laws, ordinances, codes or regulations are more restrictive than Federal requirements, the applicant will be responsible for compliance with the stricter local standard. An application for mortgage insurance does not relieve an owner of responsibility for compliance with state or local requirements. HUD will not assume any responsibility with respect to inspection, enforcement, interpretation or determination of compliance with such state or local requirements.

9.2

Qualifications of Professionals

- A. The sponsor/developer will select the professionals to be used in the environmental review, but the Lender should verify that the professionals used are qualified for their assigned responsibilities. The environmental professional who prepares the Phase I Environmental Site Assessment must meet the requirements set forth in the ASTM E-1527-97 as amended "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."
- B. Other professionals may be required to evaluate technical areas, such as toxic chemicals or soil conditions. The Lender should assure itself that these technicians are qualified. When these professionals are required, the Lender may contract for those services, if the sponsor/developer has not done so.

9.3**Phase I and Phase II Environment Site Assessment**

- A. With the request for a pre-application review, the MAP Lender must submit a Phase I ESA. If the Lender is submitting an application for a Firm Commitment under Section 223(f) or Section 232/223(f), without a pre-application review, the Phase I ESA shall be submitted with the application.
- B. The Phase I ESA must be prepared in accordance with the requirements of ASTM E-1527-97, as amended. It should include a review of current and historical records, interviews with people knowledgeable of the site, and inspection of buildings, grounds and adjacent/surrounding properties. The Phase I ESA should describe the process of investigating data and reporting findings. The report should detail the source of the data considered and provide an opinion as to its accuracy and completeness. For a Phase I ESA to be considered, it should have been completed within 180 days of the date of submission. If the borrower is updating an earlier report, the update must be no later than 150 days past the expiration of the original Phase I and within 60 days of the date of submission.
- C. The Phase I ESA will be evaluated to determine if the property is acceptable for the hazards reviewed. If it is unacceptable because it shows an identified hazard (Recognized Environmental Condition) and no correction action is feasible, then the property is rejected.

If no definite conclusion can be reached after the Phase I ESA, a Phase II ESA is required. The purpose of Phase II ESA is to provide and investigate specific technical issues and report on them, based on testing, sampling, etc. or to quantify the extent of an observed or suspected liability, such as underground tanks, surface or ground water contamination. The Phase II should include the standards against which the Assessment is to be measured, with a description of the methodology, data and sampling procedures used in the process, in addition to any relevant tests or laboratory results. Like Phase I, Phase II should only be completed by an environmental professional specifically qualified to meet the responsibilities for the issue of concern.

- D. Remediation plan for site contamination.
 - 1. Following the Phase I ESA, and, if necessary, the Phase II ESA, the borrower may propose a remediation plan designed to eliminate contamination or bring it to an acceptable level as determined by the appropriate local, state or Federal authority. The plan must be submitted by the Lender at the pre-application stage and must be reviewed by HUD before an invitation is issued to submit an application for a Firm Commitment.
 - 2. If it is uncertain whether or not implementation of the remediation plan will remove the contamination or bring it to an acceptable level, the remedial work must be done and the site tested and approved prior to the issuance of a firm commitment. The approval from the appropriate authority must be submitted with the application for a firm commitment.

3. If, however, the extent of contamination can be definitively determined and the cost of removing that contamination can be specified, HUD may allow a plan which permits the work to be done prior to initial endorsement. The remedial work must be done, and the site tested and approved, prior to initial endorsement. Approval from the appropriate authority must be submitted either prior to or with the closing documents.
- E. HUD will not accept property for firm commitment where a site contamination problem has been capped or paved over. One reason is that HUD's insurance will remain for a very long period of years, and solutions to environmental problems that seem acceptable now may turn into serious environmental problems in future years.
- F. Testing, flushing or monitoring wells on a property may be evidence of site contamination or potential site contamination. A property with testing, flushing, or monitoring wells in operation will not be considered for mortgage insurance. Non-operating testing, flushing, or monitoring wells established on the property, which have been capped over, are not a barrier to environmental approval. A monitoring well to be placed on the property by order of the appropriate state, local or Federal authority may, if HUD has committed to mortgage insurance, be placed on the site with the approval of HUD.
- G. HUD will require that remedial action taken shall be documented and approved by the appropriate local, state, or Federal authorities, and the Lender shall provide the appropriate closure and clearance document with the application.

9.4**Environmental Report**

- A. In addition to the Phase I ESA or Phase II ESA submitted at the pre-application review for new construction or substantial rehabilitation, the Lender should provide a narrative environmental report along with any available supporting documentation for the project. This report should cover the relevant topics in the Sample Field Notes Checklist in the Forms Appendix. It should focus on those environmental issues which might affect the acceptability of the project including any compliance issues with state environmental laws. The purpose of asking for an environmental report at the pre-application stage is to help make an early evaluation of any environmental issues to be resolved. It does not mean that all the documentation required for environmental review need be submitted at the pre-application stage. Important issues should be resolved at the pre-application stage; documentation on the issues may be submitted at the application for a Firm Commitment. The letter of invitation will condition the issuance of a Firm Commitment upon a finding on Form HUD-4128 that there are no unresolved environmental concerns.
- B. In addition to the issues regarding site contamination, important issues that usually must be resolved at the pre-application review include:
1. Whether or not the project might be affected by the requirements for historic preservation.
 2. Whether or not any residential buildings will be in a noise zone greater than 65 decibels originating from roadways (four lanes or more), railroads or airports and Runway Clear Zones, Clear Zones, and Accident Potential Zones.
 3. Whether or not any part of the property is located in a 100-year floodplain or a wetland.
 4. Whether property is located in a coastal high hazard area or coastal barrier resources area.
- C. Lead-based paint, which may be present in buildings built prior to 1978, is not a topic that is covered by Form HUD-4128, but the topic must be addressed by the sponsor's architect. See Appendix 5B for substantial rehabilitation and Appendix 5C for existing buildings to be refinanced or purchased under Section 223(f). Section 9.7.A, *infra*, discusses lead-based paint requirements.
- D. Asbestos, which may be present in building built prior to 1974, is not a topic that is covered by Form HUD-4128, but the topic must be addressed by the sponsor's architect. See Appendices 5B and 5C. Section 9.7.B, *infra*, briefly discusses asbestos.
- E. The Phase I ESA or Phase II ESA is required for refinancing or purchase under Section 223(f) and Section 232/223(f). The narrative environmental report is also required for a refinancing or purchase, but may be modified where the requirements are not applicable to certain existing buildings. For example, if the building itself is not listed or eligible to be listed in the National Register of Historic Places, and the building is not located in an historic district, there is no need to obtain clearance from the State Historic Preservation Office. If there is a question about whether a particular item listed on the Sample Field Notes checklist should be covered by the environmental report for an existing property, the Lender should discuss the question with the Hub or Program Center which will process the application.

9.5**Pre-Application and Firm Commitment**

- A. At the submission of the application for the Firm Commitment, the Lender must demonstrate to the HUD office that all environmental issues have been, or can be, resolved. The issues should have been identified at the pre-application review and a decision made on any issues that require resolution. Remediation of site contamination is discussed in Section 9.3 of this chapter beyond the application for a Firm Commitment, but not beyond commitment.

The implementation of plans which provide a remedy to other environmental conditions may continue through the construction period. However, the Lender must identify any plan for the cure of any environmental problem which will not be solved by the time the application for a firm commitment is submitted. HUD will have to review the Lender's plan, and, if HUD considers the plan acceptable, make the plan a condition that is spelled out in the Firm Commitment letter. This would include wetlands mitigation plans, noise abatement, historic preservation plans and floodplains map revisions. Lead-based paint and asbestos removal or containment may continue beyond final endorsement if HUD agrees.

- B. The Lender should report any changes or updates to environmental information previously supplied at the pre-application. The Lender should review with HUD staff the information provided and used in the Sample Field Notes Checklist.
- C. The HUD staff should complete the Sample Field Notes Checklist and Form HUD-4128, as soon as it has conducted its site visit and has sufficient information from its own sources and from the Lender. The results of Form HUD-4128 must be considered as part of the overall decision on the project, and any required mitigation measures included in the HUD approval documents.

9.6**Consulting with the Hub or Program Center**

- A. HUD encourages Lenders to consult early and often with field office staff on HUD environmental requirements. Local conditions and interagency relations affecting environmental review requirements differ from state to state and field office to field office. For instance, coastal zone management requirements are not applicable in most states and in states where they are applicable, procedures for showing compliance differ. In some states, a letter from the state coastal zone management agency for projects in the coastal zone is required. In others, alternative review procedures make this unnecessary. Factors such as these make it imperative that the field office be consulted where a project may involve environmental conditions of concern.
- B. Lenders are responsible for communicating the importance of early planning for environmental conditions to the owner and the owner's architect. HUD staff will remain available for consultation where environmental conditions pose design issues. Lenders should not attempt to prescribe design mitigation or require special environmental studies in advance

of consulting the field office. HUD does not encourage unnecessary costs in developing the information needed to meet environmental review requirements.

9.7**List of Environmental Concerns**

The environmental factors discussed below are:

- A. Lead-based Paint (not covered in the Sample Field Notes Checklist (SFNC))
- B. Asbestos (not covered in the SFNC)
- C. Historic Preservation (Item 18 in the SFNC)
- D. Floodplain Management (Item 17 in the SFNC)
- E. Wetlands Protection (Item 22 in the SFNC)
- F. Endangered Species (Item 24a in the SFNC)
- G. Noise Analysis (Item 19 in the SFNC)
- H. Explosive/Flammable Hazards (Item 20 in the SFNC)
- I. Coastal Barrier Resources (Item 16, SFNC)
- J. Coastal Zone Management (Item 10, SFNC)
- K. Sole Source Aquifers (Item 24b of the SFNC)
- L. Airport Clear Zones (Item 21 of the SFNC)
- M. Other Federal or State Laws
- N. Additional Hazards and Nuisances (covers pipelines, etc.)

Item 23 “Toxic Chemicals and Radioactive Materials” of the SFNC should be included as part of the Phase I ESA, discussed in Section 9.3, above.

For new construction or substantial rehabilitation, (including conversions from non-residential to residential), the Lender should review the Environmental Program Factors listed in items 25 through 33, of the Sample Field Notes Checklist and make certain that the issues are addressed in the environmental report or other exhibits submitted by the Lender.

The brief descriptions that follow are not a substitute for the requirements in the statutes, regulations, Executive Orders, and handbooks.

A. Lead-Based Paint

1. Lead-based paint requirements are applicable to apartments built before 1978, except they do not apply to housing designated exclusively for the elderly or persons with disabilities, unless a child of less than 6 years of age resides or is expected to reside, and they do not apply to 0-bedroom dwelling units. This section is relevant to conversion, substantial rehabilitation, and to refinancing or purchase of apartments under Section 232(f). It is not applicable to rehabilitation, refinancing or purchase of health care facilities.

2. All HUD regulations on lead-based paint have been updated and consolidated into a new regulation, which is at Part 35 of title 24 of the code of Federal Regulations (24 CFR Part 35). Prohibitions against using certain dangerous methods of removing paint took effect on November 15, 1999, but the remainder of the regulation takes effect on September 15, 2000. Until the latter date, applicants may chose to comply with the old regulations at 24 CFR 200.820 or the new regulations.
3. Copies of the new regulation, along with guidance materials, may be downloaded from www.hud.gov/lea or obtained by telephoning 1-800-424-LEAD. The regulation was published on September 15, 1999, beginning at page 50140 of the Federal Register.
4. Under the old regulations at 24 CFR 200.820, defective paint must either be removed or covered, and chewable surfaces must be tested for the presence of lead-based paint, and any lead-based paint found on chewable surfaces must be removed or covered. A visual assessment to identify defective paint and the testing of chewable surfaces must be conducted before commitment, and the removal or covering must be done before final endorsement.
5. Under the new regulation at 24 CFR Part 35, there are different requirements for:
 - a. residential properties built before 1960,
 - b. residential properties built between 1960 and 1977, and
 - c. properties being converted form commercial or industrial to residential and for properties undergoing substantial rehabilitation.

For residential properties built between 1960 and 1977. The owner must agree to incorporate ongoing lead-based paint maintenance operations and maintenance plans, as specified in the regulation, into routine building operations. For pre-1960 residential properties, a risk assessment must be conducted to identity lead-based hazards, and any identified hazards must be treated with interim controls prior to final endorsement (or after endorsement using escrowed funds). The terms “risk assessment,” “lead-based paint hazards,” and “interim controls” are explained in the regulation. Also, pre-1960 properties must agree to conduct ongoing lead-based paint maintenance. Furthermore, pre-1960 properties have the option of conducting “standard treatments” defined in the regulation instead of a risk assessment and interim controls. For conversions and major rehabilitations, there must be a lead-based paint inspection to identity all lead-based paint, and all lead-based paint must be abated (i.e, removed, enclosed or encapsulated). Certain notice requirements also pertain to all three types of property.

6. Most rental transactions are also subject to the HUD-EPA lead-based paint disclosure rule at 24 CFR Part 35, Subpart H (under the new regulation, the disclosure rule will be relocated to 24 CFR Part 35, Subpart A).

B. Asbestos

On any existing building built before 1974, a qualified asbestos inspector should determine if asbestos exists in the building. It may be part of insulation, may be sprayed on finishes, such as ceilings, or may be part of vinyl floor tile and the adhesive to fix the tile in place. Asbestos was used in roofing products and ceiling tiles, as well as other occasional uses. If there is

asbestos and it is friable, HUD recommends that it be removed. If asbestos is not friable or damaged, it is usually acceptable for encapsulation. This course of containment will require an Operations and Maintenance plan. An asbestos specialist should advise on the proper treatment of asbestos. All asbestos abatement shall be done in accordance with EPA and OSHA requirements for Worker Protection.

C. Historic Preservation (HUD Form 4128, Part A, No. 18)

1. HUD must follow the procedures implementing the National Historic Preservation Act (16 U.S.C. 470 et seq.) with regulations found at 36 CFR Part 800. All applications for HUD mortgage insurance, whether new construction, rehabilitation, refinancing or conversion from non-residential to residential property, are considered “federal undertakings” which require HUD to make a determination of no effect, no adverse effect, or adverse effect upon historic properties. An historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. HUD must consider the area of potential effect, regardless of whether the property is on vacant land, is a rehabilitation of an older property, or is located in an historic district.
2. Lenders may obtain from the HUD office the name and address of the State Historic Preservation Officer (SHPO) who has the right to comment on the proposal. The request from the borrower or Lender to the SHPO should consist of a narrative explaining the proposal and the front page of HUD Form 92013. It should be made as early as possible in the development process.
3. Due to differing relationships between field offices and SHPOs, procedures vary from state to state. Some SHPOs will not accept requests that do not come from HUD directly. If this is the case, the Lender should contact the Hub or Program Center. In summary, the Lender should notify the SHPO when submitting exhibits for pre-application review or earlier. If a problem is expected, it should be discussed with the Hub or Program Center. The response from the SHPO need not be received prior to the application for a Firm Commitment, but must be received before a commitment is issued.
4. The SHPO is allowed 30 days (from the receipt of sufficient information from HUD) to reply to requests for consultation. If there is no reply within that time, and there is no reason to anticipate an objection to the application, HUD may make a determination of no effect, and a commitment may be issued. Where an undertaking (HUD insurance) affects an historic property or historic district, the result of the consultation may be design change, research and preservation, salvage, or in rare cases, rejection of the application. Consultation for these procedures may take considerable time before a commitment can be issued.

D. Floodplain Management (Form HUD-4128, Part A, No. 17)

1. Applications for mortgage insurance are subject to regulations regarding floodplain management found at 24 CFR Part 55 implementing Executive Order 11988 (Floodplain Management). The borrower should check the relevant floodplain map from the Federal Emergency Management Agency (FEMA). If any part of the site or integral offsite

- development is located within the 100-year floodplain according to the applicable FEMA map, this should be discussed with HUD at the pre-application stage.
2. Mortgage insurance shall not be approved for (1) a property, other than a functionally dependent use, located in a floodway, or (2) any critical action located in a coastal high hazard area, or (3) any non-critical action located in a high hazard area, unless the property is a functionally dependent use, or meets the conditions specified in 24 CFR 55.1(b) and (c). The terms “critical use,” “coastal high hazard area,” “floodways,” and “functionally dependent use” are defined in 24 CFR 55.2. 24 CFR 55.12 lists categories of proposed actions for which the floodplain management requirements in 24 CFR 55 are not applicable.
 3. New construction in mapped 100-year floodplains is strongly discouraged. This flood buffer zone is extended to the 500-year floodplain for proposed rehabilitation, refinancing, or new construction for facilities housing or serving mobility-impaired individuals. Sites for new construction which are in the 100-year floodplain according to the FEMA map will not be considered for mortgage insurance unless one of the following steps will be taken:
 - a. A Conditional Letter of Map Amendment (CLOMA) or Conditional Letter of Map Revision (CLOMR) has been obtained from FEMA. Where the applicant has a CLOMA or CLOMR, HUD approval for a Firm Commitment will be conditioned on the requirements of the CLOMA or CLOMR and receipt of a Final Letter of Map Amendment (FLOMA) or Final Letter of MAP Revision (FLOMR), prior to final endorsement. HUD will require flood insurance on any building during the construction period until the FLOMA or FLOMR is issued; or
 - b. Extraordinary circumstances exist which lead HUD to the conclusion that there are no practicable alternatives to siting the project in the floodplain. In order to come to a conclusion of no practicable alternative, HUD must conduct an 8-step decision making process which includes publishing two public notices and taking comments, as summarized in 24 CFR 55.20. In such instances, prior to issuing the first public notice, HUD will need detailed information regarding exactly how the property will be altered and improvements designed. This information includes the elevation of the property, the elevation of the flood plain, and location of life support system. From the time any portion of the project is built, flood insurance is required. The eight-step process shall be completed before issuance of the Firm Commitment. An abbreviated eight-step process may be used by the Hub or Program Center for purchase or refinancing actions described in 24 CFR 55.12(a)(2) or repair, rehabilitation, modernization or improvement actions described in 24 CFR 55.12(a)(3).
 - c. All “critical actions” as defined in 24 CFR 55.2(b)(2), must comply with the requirements of 24 CFR 55.20(e).
 4. Conversion projects, those changing a non-residential use to a residential use, are considered the same as “new construction” for floodplain in management.
 5. Rehabilitation, purchase and refinancing proposals described in 24 CFR 55.12(a)(1) and (3) may be acceptable when located in the 100-year floodplain after HUD conducts an abbreviated version of the 8-step process specified in 24 CFR 55.20.

HUD will evaluate risks and mitigation measures in making its decision. It is HUD policy to discourage proposals if the lowest floor and/or the life support facilities or egress and ingress, of the existing building is more than 12 inches below the 100-year floodplain line.

6. Where a site does not appear to be located in the floodplain on official FEMA maps, but shows evidence of flooding, HUD is not precluded from qualitatively evaluating the acceptability of the site. Lenders will be required to provide extensive data to aid HUD in evaluating floodplain sites.
7. In addition to processing under paragraphs 3-6 of this section, any building accepted for mortgage insurance which is located within a FEMA mapped floodplain is required to carry flood insurance in the amount of the loan for the term of the loan, subject to available maximum coverage. At the time of application for Firm Commitment, the Lender is required to submit a completed Standard Flood Hazard Determination Form, and proof that the mortgagor has a commitment for flood insurance when the new mortgagor acquires the property.
8. All leases (new and renewal) must contain acknowledgements signed by tenants indicating that they have been advised that the property is in a floodplain and flood insurance is available for their personal property. This applies to properties within the 100-year floodplain and to critical actions within the 500-year floodplain.

E. Wetlands Protection (Form HUD-4128, Part A, No. 22)

1. Applications for mortgage insurance on new construction are subject to Executive Order (EO) 11990 "Protection of Wetlands" In general, the EO discourages the development or disturbance of wetlands. Proposals impacting wetlands must be reviewed by HUD to determine consistency with HUD wetland protection policy.
2. Wetlands are those identified on the National Wetland Inventory maintained by the U.S. Fish and Wildlife Service. Projects on land listed in the inventory will be considered only after HUD conducts an eight-step decision-making process which is the same as the one used for the flood plains process. It includes consultation, issuing two public notices and taking public comment. Wetlands under local or state jurisdiction are subject to state or local review as appropriate. The eight-step process is not applicable to state or local requirements. The eight-step process shall be completed before issuance of a Firm Commitment.
3. Only in rare cases will rehabilitation, purchase and refinancing proposals involve wetlands impacts.
4. The Lender will be required to provide extensive data to aid HUD in evaluating wetland impacts. The Lender should consult early with the Field Office on any application with a site impacting wetlands.

F. Endangered Species (Form HUD-4128, Part A, No. 19)

Under Section 7 of the Endangered Species Act, HUD must consult with the U.S. Fish and Wildlife Service or, where applicable with the National Oceanic and Atmospheric

Administration, whenever a proposal may affect an endangered or threatened species or its habitat. A required consultation should be assumed for any site within the critical habitat (as defined in 50 CFR Part 226) of a listed species. In areas where impacts on endangered or threatened species are a concern, all appropriate information regarding possible impacts of the project should be provided to HUD as early as possible. Consultation under Section 7 may result in more stringent conservation measures than would otherwise be imposed. The Hub will advise the Lender where information on endangered species may be obtained.

G. Noise (HUD Form 4128, Part A, No. 19)

1. HUD standards regarding the acceptability of noise impacts on residential property are found at 24 CFR Part 51. For new construction and conversion from nonresidential to residential projects, these standards must be met. Where threshold criteria are met or exceeded, a noise analysis utilizing the methodology in HUD's Noise Guidebook (HUD-953-CPD) will be performed by HUD as part of HUD's environmental assessment. The HUD field office should be consulted prior to attempting to design mitigation measures.
2. For rehabilitation and refinancing, noise exposure by itself will not result in the rejection of existing properties for insurance, but will be considered as a marketability factor. For rehabilitation projects, HUD will encourage appropriate noise attenuation measures for inclusion in the alternation.

H. Explosive/Flammable Hazards (HUD Form 4128, Part A, No. 20)

1. HUD will not insure a property where structures and residents will be exposed to unacceptable risks posed by proximity to explosive or flammable hazards. This means that for new construction projects, and rehabilitation projects where unit density is increased or where there is a conversion from non-residential to residential or where a vacant building is made habitable, there must be an Acceptable Separation Distance (ASD) away from aboveground storage facilities with explosive or flammable material contents and similar industrial facilities. HUD standards regarding proximity to explosive or flammable hazards are found at 24 CFR Part 51 Subpart C. Analysis of sites near or in the vicinity of these types of facilities must be performed by HUD as part of the environmental assessment in accordance with the HUD guidebook: "Siting of HUD-Assisted Projects Near Hazardous Facilities (HUD-1060-CPD)". If a plan is agreed upon with HUD before the invitation letter, these hazards may be mitigated during the construction period, if the work can be done on the subject property. For projects to be refinanced, purchased, and with minor rehabilitation, HUD will qualitatively evaluate the risks associated with proximity to hazardous facilities.

I. Coastal Barriers (HUD Form 4128, Part A, No. 16)

1. Under the Coastal Barriers Resources Act, as amended, and cited in 24 CFR 50.4(c), HUD is prohibited from insuring a project located within designated coastal barriers of the Atlantic Ocean, Gulf of Mexico, or the Great Lakes. Projects located within coastal barriers designated on Department of Interior coastal barrier resources maps will not be accepted for processing.

J. Coastal Zone Management (HUD Form 4128, Factor 10, Planning and Findings)

1. Projects located within a state's coastal management zone must be found consistent with the approved state Coastal Zone Management program. In many states, HUD will require a letter from the State Coastal Zone Management Agency confirming consistency with the approved program. Mortgagees should be aware of the extent of coastal management zones in coastal states and contact the field office early when examining a proposal in a coastal zone.

K. Sole Source Aquifers (HUD Form 4128, Part A, No. 24)

1. Projects utilizing municipal water and sewer and with appropriate local drainage and runoff approval require no review for sole source aquifers. For other projects, new construction and some rehabilitation projects located within the boundaries of the recharge area of a designated sole source aquifer must be reviewed by EPA for their effect on the sole source aquifer. An aquifer is an underground body of water usually kept in place by rock, gravel, or sand. HUD offices will identify the local, state or Federal agency with maps of sole source aquifers.

L. Runway Clear Zone, Clear Zone, or Accident Potential Zone (Form HUD-4128, Part A, No. 21)

1. HUD standards regarding the acceptability of property located in Runway Clear Zones (also known as Runway Protection Zones), Clear Zones, and Accident Potential Zones are found at 24 CFR Part 51 Subpart D. An Accident Potential Zone is an area at military airfields which is beyond the Clear Zone. Construction or major rehabilitation of any property located within a Clear Zone is prohibited. Acquisition, refinance and minor rehabilitation of projects within Clear Zones are allowed with some restrictions. HUD must determine that projects located in Accident Potential Zones are generally consistent with Department of Defense land use compatibility guidelines for Accident Potential Zones.
2. HUD, as part of its environmental review for an existing property, shall advise the Lender who will advise the mortgagor which is purchasing the property that the property is in a Runway Clear Zone, Clear Zone, and what the implications of such a location are. The buyer must sign a statement acknowledging receipt of this information. HUD may reject for mortgage insurance existing property within a Runway Clear Zone or Clear Zone because of the possibility that the property may be acquired at that later date by the airport operator.

M. Other Federal or State Laws (HUD Form 4128, Part A, No. 24)

1. Applications for mortgage insurance are also subject to provisions of other Federal authorities which seldom require action on the part of HUD, including the Wild and Scenic Rivers Act, Farmland Protection Policy Act, and regulations implementing the Clean Air Act. There are State regulations implementing air quality. HUD will advise the Lender if any actions under these or other Federal or State authorities are required.
2. The HUD office will also determine whether or not Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations, is applicable to the project. This Executive Order requires that the provision of HUD mortgage insurance to projects not result in disproportionately high and adverse

human health or environmental effects on minority populations and low-income populations. Where impacts of a project on a minority or low-income population, or siting of a project in an adverse environment raises questions of discrimination, HUD will perform the necessary analysis before determining acceptability of the project, during the pre-application stage. HUD will advise the Lender at the pre-application stage if this is a concern.

3. HUD may require mitigation of a variety of nuisances and hazards on the property which would affect the health and safety of residents and the security of the collateral.

N. Commonly Found or Observed Additional Nuisances and Hazards

1. All parts of any structure must be at least 10 feet from the outer boundary of the easement for any high pressure gas or liquid petroleum transportation pipeline.
2. No structure shall be constructed within the easement of any overhead high voltage transmission line. In addition, all structures shall be located outside the engineered fall distance of any support structure for high voltage transmission lines, radio antennae, satellite towers, etc. This does not apply to local service electric lines and poles.
3. HUD has additional requirements regarding operating and/or abandoned oil or gas wells, sour gas wells, and slush pits. Additional information may be obtained from the HUD field office.
4. Hubs may adopt additional requirements to address unique local concerns, but, if any local requirement is mandated, the Hub must inform the Deputy Assistant Secretary for Multifamily Housing and the HUD headquarters Housing Environmental Clearance Officer of the requirement and its rationale.